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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,666	08/01/2006	Brian John Higgins	4623-053150	3792
28289	7590	03/30/2010	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			SMITH, NKEISHA	
			ART UNIT	PAPER NUMBER
			3632	
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			03/30/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,666	<b>Applicant(s)</b> HIGGINS, BRIAN JOHN	
	<b>Examiner</b> NKEISHA J. SMITH	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-9 and 11-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 and 11-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/17/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/18/2009</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following correspondence is a Final Office Action for application no. 10/533,666 for a GUTTER AND MOUNTING DEVICE FOR BUILDINGS, filed on 10/17/2005. This correspondence is in response to applicant's reply filed on 12/18/2009. Claims 7-9 and 11-36 are pending.

#### ***Priority***

2. Applicant is advised of possible benefits under 35 U.S.C. 119(a)-(d), wherein an application for patent filed in the United States may be entitled to the benefit of the filing date of a prior application filed in a foreign country.

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

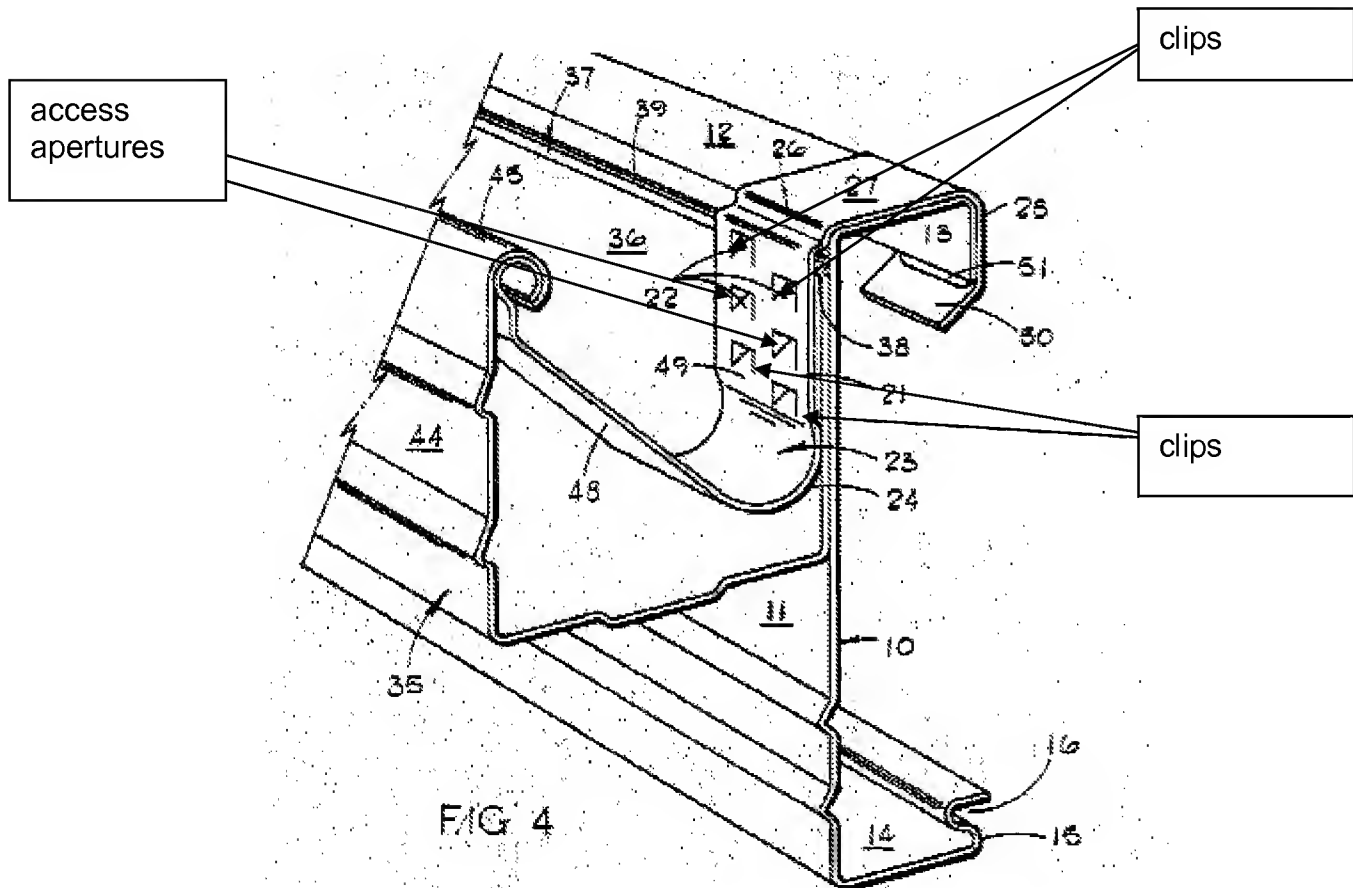
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 7-9 and 11-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Lasscock (3,864,882).

Regarding claim 7, Lasscock teaches a mounting device (Figs. 1, 2), the mounting device including an elongated device body (20) that extends in a second longitudinal direction between opposite ends, the body including an attachment section (29) and a gutter mounting section (21), the gutter mounting

section including a plurality of gutter retaining clips (tabs located in area as shown below) spaced apart from one another in the second longitudinal direction.



Regarding claim 8, Lasscock teaches the device of claim 7, wherein said elongated device body includes a generally U-shaped portion, one leg thereof being the attachment section and the other leg thereof being the gutter mounting section, the legs of the U- shaped portion being spaced apart.

Regarding claim 9, Lasscock teaches the device of claim 8, wherein the gutter retaining clips include projections which extend into the recess.

Regarding claim 11, teaches the device of claim 9, wherein said projections are hook-like elements. The examiner notes that this claim involves improper method limitations, because the claim is directed to an apparatus, which are not given any patentable weight.

Regarding claim 12, Lasscock teaches the device of claim 8, further including a plurality of access apertures (holes located in gutter mounting section through which elements 22 are connected) in the gutter mounting section.

Regarding claim 13, Lasscock teaches the device of claim 7, wherein the retaining clips are aligned at an angle with respect to a single edge of the mounting device.

Although claim 14 recites purely functional limitations, Lasscock teaches the device of claim 7, wherein the attachment section is capable of receiving fasteners.

Regarding claim 15, Lasscock teaches the device of claim 8, wherein the body is channel shaped and is generally U-shaped in cross-section transverse to the longitudinal direction.

Regarding claim 16, Lasscock teaches a gutter and mounting device (Figs. 1, 2), the gutter (35) comprising a generally channel or trough shaped body with an inner wall having a gutter mounting thereon, and the gutter extending in a first longitudinal direction, the mounting device including an elongated device body (20) that extends in a second longitudinal direction between opposite ends, the body including an attachment section (29) which is attachable to the building and a gutter mounting section (21), the gutter mounting section including a

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plurality of gutter retaining clips (22) spaced apart from one another in the longitudinal direction.

Regarding claim 17, Lasscock teaches the device of claim 16, wherein said elongated body includes a generally U-shaped portion, one leg thereof being the attachment section and the other leg thereof being the gutter mounting section, the legs of the U-shaped portion being spaced apart.

Regarding claim 18, Lasscock teaches the device of claim 17, wherein the gutter retaining clips include projections which extend into the recess and are adapted to cooperate with the gutter mounting on the inner wall of the gutter.

Regarding claim 19, Lasscock teaches the device of claim 18, wherein the gutter mounting on the inner wall of the gutter is a raised elongated rib which, when the gutter is in the installed position, is disposed within the recess and inhibited from removal by said projections (Fig. 2).

Regarding claim 20, Lasscock teaches the device of claim 18, wherein said projections are hook-like elements pressed or punched out of the gutter mounting section. The examiner notes that this claim involves improper method limitations, because the claim is directed to an apparatus, which are not given any patentable weight.

Regarding claim 21, Lasscock teaches the device of claim 18, further including a plurality of access apertures in the gutter mounting section.

Regarding claim 22, Lasscock teaches the device of claim 16, wherein the retaining clips are aligned at an angle with respect to a single edge of the

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mounting device corresponding to an angle of a fall required when the gutter is in the installed position.

Although claim 23 recites purely functional limitations, Lasscock teaches the device of claim 16, wherein the attachment section is capable of receiving fasteners.

Regarding claim 24, Lasscock teaches the device of claim 16, wherein the body is channel shaped and is generally U-shaped in cross-section transverse to the longitudinal direction.

Regarding claim 25, Lasscock teaches a method of installing a gutter that extends in a first longitudinal direction, comprising the steps of: attaching a mounting device to a building, the mounting device comprising an elongated device body that extends in a second longitudinal direction between opposite ends and including a plurality of retaining clips, the mounting device being positioned on the building so that the clips are aligned so as to correspond to an angle of a fall required when the gutter is in an installed position; and mounting the gutter to the device by moving the gutter to the installed position where the retaining clips cooperate with the gutter to retain the gutter in the installed position, when in the installed position, the first longitudinal direction of the gutter is substantially parallel to the second longitudinal direction of the elongated device body.

Regarding claim 26, Lasscock teaches the method of claim 25, wherein the retaining clips of the mounting device are aligned at an angle with respect to a single edge of the mounting device corresponding to the angle of the fall, and

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the step of attaching the mounting device to the building further comprises aligning the single edge of the mounting device to an edge of the building.

Regarding claims 27 and 28, Lasscock teaches the device of claims 7 and 16, wherein at least two retaining clips of the mounting device are aligned.

Regarding claim 29, Lasscock teaches the method of claim 25, wherein at least two retaining clips of the mounting device are aligned, engage the gutter, and the step of attaching the mounting device to the building further comprises mounting the gutter to the mounting device such that at least two retaining clips simultaneously engage the gutter.

Regarding claims 30-33, Lasscock teaches the device of claims 7 and 16, wherein the gutter mounting section includes a plurality of access apertures (holes as shown in the figure above) in an alternating arrangement with the mounting clips.

Regarding claims 34 and 35, Lasscock teaches the method of claim 25, wherein the gutter mounting section includes a plurality of access apertures (holes as shown in the figure above) in an alternating arrangement with the mounting clips.

Regarding claim 36, Lasscock teaches the device of claim 22, wherein at least two retaining clips of the mounting device are aligned.

### ***Response to Arguments***

6. Applicant's arguments filed 12/18/2009 have been fully considered but they are either moot or not persuasive.



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7. Regarding claims 7-9 and 11-36, applicant states that the prior art Lasscock reference does not teach all of the claims limitations of independent claims 7, 16 and 25. Specifically, applicant argues that the gutter retaining clips (22) of Lasscock are spaced apart vertically and are not spaced apart in the second longitudinal direction. The Examiner respectfully disagrees. The clips are spaced apart from each other in a second longitudinal direction because the clips on the left hand side are horizontally spaced from the clips on the right hand side. The Examiner notes that the applicant does not specifically define the second longitudinal direction to be on a specific longitudinal or horizontal axis. Even so, the bottom of the clip on the left hand side is on the same longitudinal or horizontal axis as the top of the clip on the right hand side. Thus, the retaining clips of one column are longitudinally spaced apart in a second longitudinal direction from the retaining clips of other column.

8. Next, applicant argues that the Lasscock reference does not teach the mounting device comprising an elongated device body, with the device body not being elongated. The Examiner respectfully disagrees. Although the applicant directs the Examiner's attention to certain definitions of the term "elongated", the Examiner notes that the term has also been defined to mean "to draw out to greater length; lengthen; extend." The Examiner takes the interpretation that the device body of the clip of Lasscock is in fact elongated because it is formed in an extended manner. The body is extended as shown by the multiple columns of clip, making the body "elongated" in order to accommodate all of the clips.

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9. Regarding the dependent claims (claims 8, 9, 11-15, 17-24, 26-36), applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

10. With respect to claims 13, 22 and 25, in response to applicant's argument that the Lasscock reference does not teach that the retaining clips are aligned so as to correspond to an angle of fall when the gutter is in an installed position, the Examiner states that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As shown in Figs. 1 and 2, the device of Lasscock is placed on the gutter-the device (20) being placed on the gutter 35 (col. 3, lines 36-46). Thus, when the mounting device of Lasscock is placed on the gutter and the gutter is in an installed position, the retaining clips are engaged with the gutter and the clips can be positioned at the same angle as that of the gutter. Thus when the gutter slopes downward, or in any other position, the clips that are situated on the gutter could similarly slope downward, or in any other position, by virtue of their placement on the gutter.

11. Finally, with respect to claims 27 and 28, applicant first argues that the Lasscock reference does not teach that at least two retaining clips of the

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mounting device are aligned such that the clips are able to simultaneously engage the gutter to retain the gutter to the mounting device. Then, applicant "acknowledges that at least two tongues (22) could engage the gutter (35) simultaneously" but only when the gutter is arranged at a certain angle. The Examiner states that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicant "acknowledges that at least two tongues (22) could engage the gutter (35) simultaneously" (as shown in Fig. 1 of Lasscock) and that is all that is necessary to read on the claimed limitations. Going further, however, the limitations set forth in claim 7 do not include the gutter, and therefore, the position of the gutter is immaterial. In claim 16, assuming *arguendo* that the applicant is correct regarding the angle of the gutter, the Examiner notes that the position or angle of the gutter is not specifically defined so the gutter being inclined at a steep angle is acceptable.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NKEISHA J. SMITH whose telephone number is (571) 272-5781. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be reached on (571) 272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NKEISHA J. SMITH/  
Examiner, Art Unit 3632

/Anita M. King/  
Primary Examiner, Art Unit 3632

March 26, 2010